

Legal Opinion E 01-38

Date: December 11, 2001

To: Larry Rouse
Foothill College Academic Senate President

Dear Mr. Rouse,

I am responding to your recent e-mail inquiry to Chancellor Thomas Nussbaum in which you asked for a legal explanation for the systemwide policy of providing complainants with the right to appeal the administrative determination in an unlawful discrimination complaint against a district but not the respondents.

The simple answer to your question is that the nondiscrimination provisions of the California Code of Regulations, title 5, section 59300 et seq. provide appeal rights to complainants but not respondents. Specifically, section 59338 states as follows in pertinent part:

- "(a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to Section 59336, the complainant may, within fifteen (15) days from the date of the administrative determination, submit a written appeal to the district governing board. . . .
- (b) A copy of the final district decision rendered by the governing board that includes complainant's right to appeal the district's decision to the Chancellor pursuant to Section 59339 shall be forwarded to the complainant and to the Chancellor.
- (c) . . .The complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to Section 59339."

A more comprehensive explanation is that the purpose of the nondiscrimination provisions of title 5, section 59300 is to implement the provisions of Government Code sections 11135 through 11139.5. Those Government Code provisions protect certain categories of persons from unlawful discrimination. The categories of protected persons include those who are discriminated against because of "ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability." (Cal. Code Regs., tit. 5, § 59300.)

Persons accused of unlawful discrimination are not protected under the statutes. Therefore, they are not provided appeal rights in the nondiscrimination provisions of title 5.

The unlawful discrimination provisions of title 5 present an administrative and investigatory complaint process designed to determine if a violation occurred and what action the district will take to address the situation. It is not, and was never intended to be a quasi-judicial administrative proceeding that provides appeal rights for the accused. Before a district can take any type of disciplinary action against either a student or an employee, applicable due process procedures would need to be followed and the person accused of misconduct would then have the right, during that subsequent proceeding, to raise any objections he or she may have.

I hope you find this information helpful.

Sincerely,
Ralph Black

RB:RJB:sj

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